

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19943 of The Mills Building Associates, LLC, pursuant to 11 DCMR Subtitle X, Chapter 10, for area variances from the loading requirements of Subtitle C § 901.1, and from the habitable penthouse regulations of Subtitle C § 1500.3(d), to renovate and construct additions to an existing office building in the D-5/D-6 Zones at premises 1700 Pennsylvania Avenue, N.W. (Square 168, Lot 50).

HEARING DATES: March 13, 2019 and April 10, 2019¹

DECISION DATE: April 10, 2019

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 3A.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 2A and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2A, which is automatically a party to this application. The ANC submitted a report recommending approval of the application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on March 5, 2019, at which a quorum was present, the ANC voted 8-0-0 to support the application. (Exhibit 33.)

The U.S. Secret Service filed a letter in support of the application. (Exhibit 3D.)

The Office of Planning ("OP") submitted a timely report, dated March 1, 2019, in support of the application. (Exhibit 30.) The District Department of Transportation ("DDOT") submitted a

¹ This case was publicly heard on March 13, 2019, and continued for a limited scope hearing on April 10, 2019.

BZA APPLICATION NO. 19943
PAGE NO. 2

report, dated March 1, 2019, expressing no objection to the approval of the application. (Exhibit 31.)

As directed by 11 DCMR Subtitle X § 1002.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 1002.1 for area variances from the loading requirements of Subtitle C § 901.1, and from the habitable penthouse regulations of Subtitle C § 1500.3(d), to renovate and construct additions to an existing office building in the D-5/D-6 Zones. The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that in seeking variances from 11 DCMR Subtitle C §§ 901.1 and 1500.3(d), the Applicant has met the burden of proof under 11 DCMR Subtitle X § 1002.1, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.


It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 3B AND WITH THE FOLLOWING CONDITION:**

1. The Applicant shall implement the Loading Management Plan provided in Exhibit 24 with the addition of the following language:
 - a. A flagger shall be present whenever a vehicle is entering or exiting the loading dock. This flagger will alert pedestrians, bicyclists, and other vehicles to trucks that may be entering or exiting the facilities.

VOTE: **5-0-0** (Frederick L. Hill, Carlton E. Hart, Lesylleé M. White, Lorna L. John, and Anthony J. Hood to APPROVE.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

ATTESTED BY:



SARA A. DARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: April 17, 2019

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT

DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19943-A of The Mills Building Associates, LLC, pursuant to 11 DCMR Subtitle Y § 703, for a modification of consequence to the plans approved by BZA Order No. 19943 to permit adjustments to the interior layout of the building, setbacks, and massing of the proposed penthouse in an existing mixed-use building in the D-5/D-6 Zones at premises 1700 Pennsylvania Avenue N.W. (Square 168, Lot 50).

HEARING DATES (19943):	March 13, 2019 and April 10, 2019
DECISION DATE (19943):	April 10, 2019
ORDER ISSUANCE DATE (19943):	April 17, 2019
MODIFICATION OF CONSEQUENCE	
DECISION DATE (19943-A):	December 18, 2019

SUMMARY ORDER ON REQUEST FOR MODIFICATION OF CONSEQUENCE

Original Application. In Application No. 19943, the Board of Zoning Adjustment (“Board” or “BZA”) approved the request by The Mills Building Associates, LLC (the “Applicant”) for area variances from the loading requirements of Subtitle C § 901.1, and from the habitable penthouse regulations of Subtitle C § 1500.3(d) to renovate and construct additions to an existing office building. The Board issued Order No. 19943 on April 17, 2019. (Exhibit 3A.) The approval was subject to one condition.

Proposed Modification. On October 22, 2019, the Applicant submitted a request for minor modification to Order No. 19943. (Exhibits 1-3D.) The Applicant proposes to modify the interior layout of the ground floor and the layout, setbacks, and massing of the proposed penthouse. The proposed modifications incorporate the feedback received by the Applicant from Commission of Fine Arts staff. The Applicant submitted revised plans reflecting these modifications. (Exhibit 4A.)

Notice of the Request for Modification. Pursuant to Subtitle Y §§ 703.8-703.9, the Applicant provided proper and timely notice of the request for modification of consequence. (Exhibit 3.)

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission (“ANC”) 2A.

BZA APPLICATION NO. 19943-A
PAGE NO. 2

ANC Report. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on November 20, 2019, at which a quorum was present, the ANC voted 8-0-0 to support the request. (Exhibit 6.)

OP Report. The Office of Planning ("OP") submitted a report recommending approval of the proposed modification but found that the request should be considered as a modification of consequence because "the proposal is to redesign and relocate architectural elements and open spaces from the final design approved by the Board." (Exhibit 5.)

DDOT Report. The District Department of Transportation did not submit a report in response to this request for modification.

Request for Modification of Consequence

The Applicant sought a minor modification under Subtitle Y § 703.4 to modify the approved plans to adjust the interior layout of the building, setbacks, and massing of the proposed penthouse in an existing mixed-use building in the D-5/D-6 Zones at premises 1700 Pennsylvania Avenue N.W. (Square 168, Lot 50).

The Board concurs with OP and determines that the Applicant's request instead meets the definition of a modification of consequence in Subtitle Y § 703.4, which defines a modification of consequence as a "proposed change to a condition cited by the Board in the final order, or a redesign or relocation of architectural elements and open spaces from the final design approved by the Board."

Nonetheless, based upon the record, the Board concludes that the Application has met the procedural requirements for a modification of consequence and that the Applicant has met its burden of proof for a modification of consequence as directed by Subtitle Y § 703.4.

"Great Weight" to the Recommendations of OP

The Board is required to give "great weight" to the recommendation of OP pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.) and Subtitle Y § 405.8). The Board finds OP's recommendation that the Board approve the request as a modification of consequence persuasive and concurs in that judgment.

"Great Weight" to the Written Report of the ANC

The Board must give "great weight" to the issues and concerns raised in the written report of the affected ANC pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.) and Subtitle Y § 406.2) The Board finds the ANC's recommendation that the Board approve the application persuasive and concurs in that judgment.

BZA APPLICATION NO. 19943-A
PAGE NO. 3

Pursuant to Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application for modification of consequence of BZA Order No. 19943 is hereby **GRANTED**, subject to the approved plans at Exhibit 3B of Application No. 19943, as modified by Exhibit 4A of Application No. 19943-A, and the following condition, as carried forward from BZA Order No. 19943:

1. The Applicant shall implement the Loading Management Plan provided in Exhibit 24 of the record for Application No. 19943 with the addition of the following language:
 - a. A flagger shall be present whenever a vehicle is entering or exiting the loading dock. This flagger will alert pedestrians, bicyclists, and other vehicles to trucks that may be entering or exiting the facilities.

In all other respects, Order No. 19943 remains unchanged.

VOTE: 3-0-2 (Frederick L. Hill, Carlton E. Hart, Lorna L. John to APPROVE; Anthony J. Hood, and Lesylleé M. White not participating.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

ATTESTED BY: _____


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: December 19, 2019

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.